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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 531 (ALC)

5 JOSEPH PERLMAN,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 24, 2019

3:15 p.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the

16 Southern District of New York

DAVID ABRAMOWICZ

17 MICHAEL MCGINNIS

Assistant United States Attorney

18 SEAN HECKER

19 Attorney for Defendant Perlman

20 ABRA METZ-DWORKIN

Attorney for Defendant Perlman

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1 (Case called)

2 MR. ABRAMOWICZ: Good afternoon, your Honor.

3 David Abramowicz and Michael McGinnis, for the
4 government.

5 MS. METZ-DWORKIN: Abra Metz-Dworkin, on behalf of
6 Mr. Perlman, here with my colleague Sean Hecker.

7 THE COURT: OK. Good afternoon, Mr. Perlman.

8 My understanding is that Mr. Perlman wants to waive
9 indictment, be arraigned on an information and then plead
10 guilty to Count One of that information pursuant to an
11 agreement with the government.

12 Is that correct?

13 MS. METZ-DWORKIN: That's correct, your Honor.

14 THE COURT: OK. I am going to ask you some questions,
15 Mr. Perlman. I am going to require that your answers be under
16 oath, so I'll ask my wonderful and talented deputy to
17 administer the oath.

18 (Defendant Joseph Perlman sworn)

19 THE COURT: Mr. Perlman, now that you taken an oath to
20 tell the truth I want you to understand anything that you say
21 can be used against you in a prosecution for false statement or
22 perjury or similar charges.

23 Do you understand?

24 THE DEFENDANT: Yes.

25 THE COURT: What is your full name?

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1 THE DEFENDANT: Joseph Edward Perlman.

2 THE COURT: How old are you?

3 THE DEFENDANT: 57.

4 THE COURT: How far did you go school?

5 THE DEFENDANT: Some college.

6 THE COURT: Are you currently or have you recently
7 been under the care of a physician or a psychiatrist?

8 THE DEFENDANT: No.

9 THE COURT: Have you recently been hospitalized or
10 treated for narcotics addiction or alcohol abuse?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: In the last 24 hours have you had any
13 drugs, medicine, pills or alcoholic beverages of any sort?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Have you been furnished with a copy of the
16 information here?

17 THE DEFENDANT: Yes.

18 THE COURT: OK. And let me ask counsel, do you have
19 any doubts about his competence to proceed; defense counsel?

20 MS. METZ-DWORKIN: No, your Honor.

21 THE COURT: I'll note for the record that Mr. Perlman
22 appears alert and he answered questions appropriately. I find
23 that he is competent to proceed. We will continue.

24 The information as One Count, it charges conspiracy to
25 commit wire fraud. I will summarize the information and

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1 indicate that were at least in or about October 2018 in up to
2 and including in or about October 2019 that you willfully and
3 knowingly conspired with others to commit wire fraud.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And that it was a part and object of the
7 conspiracy that you and others would devise a scheme and
8 artifice to defraud.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And for purposes of executing such scheme
12 and artifice to defraud that you and others would transmit and
13 cause to be transmitted by means of wire communication and
14 interstate and foreign commerce writings, signs, signals,
15 pictures and sounds for the purpose of executing that scheme.

16 Do you understand?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And specifically, that you participated in
19 a scheme to obtain and steal advanced fees provided by victims
20 in exchange for fraudulent standby letters of credit and
21 executed such a scheme through use of interstate wires
22 including e-mail and telephone calls.

23 Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: All right. You have a constitutional

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1 right to be charged by an indictment of a grand jury but you
2 can waive that right and consent to being charged by
3 information of the United States Attorney.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Instead of an indictment this felony
7 charge against you has been brought by the U.S. Attorney by the
8 filing of an information. Unless you waive indictment you may
9 not be charged with a felony unless a grand jury finds by
10 return of an indictment there is probable cause to believe that
11 a crime has been committed and that you committed it.

12 Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If do you not waive indictment the
15 government may present the case to the grand jury and ask it to
16 indict. The grand jury is composed of 16 and not more than 23
17 persons. At least 12 grand jurors must find that there is
18 probable cause to believe that you committed the crime to which
19 you were charged before you may be indicted. The grand jury
20 might or might not indict you.

21 Do you understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If you waive indictment by the grand jury
24 the case will proceed against you on the U.S. Attorney's
25 information just as though you had been indicted.

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1 Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you discussed the information with
4 your attorney?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you discussed waiving your right to
7 indictment by the grand jury with your attorney?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand your right to indictment
10 by grand jury?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Have any threats or promises been made to
13 induce you to waive indictment?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Do you wish to waive your right to
16 indictment by a grand jury?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I have before me a waiver of indictment
19 form which appears to bear your signature. Is this your
20 signature on that top signature line?

21 THE DEFENDANT: My eyes aren't that good.

22 (Pause)

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And before signed it did you discuss it
25 with your attorney?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you sign it because you wished to
3 waive your right to indictment by a grand jury?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Defense counsel, is there any reason why
6 your client should not waive indictment?

7 MS. METZ-DWORKIN: No, your Honor.

8 THE COURT: All right. I find that the waiver is
9 knowingly and voluntarily made and I accept it and I will enter
10 an order and finding to that effect. We will now proceed to
11 arraignment on information. I know that you intend to plead
12 guilty to Count One of the information, but before I could
13 accept any plea of guilty I have to make sure that you
14 understand the rights that you are waiving by pleading guilty
15 and that there is a factual basis for a plea. So for the time
16 being, the Court will enter on your behalf a plea of not guilty
17 to the information.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right. Now you have a constitutional
21 right to continue to plead not guilty to Count One of the
22 information.

23 Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: If you persist in that right you have the

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1 right to a speedy and public trial by a jury.

2 Do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At that trial you would be presumed
5 innocent and you would not have to prove that you were
6 innocent.

7 Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: At that trial the burden of proof would be
10 on the government and they would have to prove each and every
11 element of the crime charged beyond a reasonable doubt.

12 Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: At that trial and at every stage of this
15 criminal litigation you have the right to be represented by an
16 attorney. If you could not afford to hire your own attorney
17 the Court would give you an attorney for free.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Counsel, are you retained or appointed on
21 this matter?

22 MS. METZ-DWORKIN: Appointed, your Honor.

23 THE COURT: All right. Let's turn to those elements
24 that the government would have to prove beyond a reasonable
25 doubt. So for Count One of the information conspiracy to

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1 commit wire fraud the government would have to prove that you
2 willfully and knowingly conspired.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: That means that you knowingly and
6 willfully entered into an agreement with at least one other
7 person to commit a crime.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And that the object of that crime, the
11 object of that conspiracy or agreement was that you and the
12 others would devise a scheme and artifice to defraud.

13 Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And that you would voluntarily and
16 intentionally devise that scheme to defraud another out of
17 money.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And that that scheme was devised with the
21 intent to defraud.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And that it was reasonably foreseeable
25 that interstate wire communications would be used.

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1 Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And that interstate wire communications
4 would in fact be used.

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: In addition, if you plead guilty you'll be
8 giving up your right to challenge the venue of the prosecution.

9 Do you understand that?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: Specifically, the government would have to
12 prove that you participated in a scheme to obtain and steal
13 advance fees provided by victims in exchange for fraudulent
14 standby letters of credit and that you executed that scheme to
15 the use of interstate wires.

16 Do you understand?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Counsel for the government, have I left
19 out an element of the offense?

20 MR. ABRAMOWICZ: No, your Honor.

21 THE COURT: Counsel for defense, have I left out an
22 element of the offense?

23 MR. HECKER: No, your Honor.

24 THE COURT: So the government would have to prove each
25 and every one of those elements to a jury beyond a reasonable

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1 doubt. In order to attempt to prove those elements the
2 government would call witnesses.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Your lawyer could question those witnesses
6 and your lawyer could object to any evidence the government
7 tried to introduce against you.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: You could call your own witnesses at trial
11 and your lawyer would have the subpoena power of the United
12 States to make witnesses come to court for you.

13 Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You have the right to testify in your own
16 behalf at trial but at the same time you could not be forced to
17 testify because you have a right or privilege against
18 self-incrimination. What a right or privilege against
19 self-incrimination means is that you could not be required to
20 say anything out of your own mouth that makes you appear
21 guilty.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: So even if you are in fact guilty, you are
25 not required to plead guilty. You could remain silent and

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1 force the government to attempt to prove each and every element
2 of the crime charged beyond a reasonable doubt.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: If the government could not prove each and
6 every element of the crime charged beyond a reasonable doubt to
7 a jury, the jury would have an obligation to find you not
8 guilty.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So I reiterate, even if you are in fact
12 guilty you are not required to plead guilty.

13 Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: On the other hand, if you plead guilty
16 I'll have to ask you what you did that makes you guilty. And
17 when you answer that question you'll be saying things out of
18 your own mouth that make you appear guilty, thereby giving up
19 your right or privilege against self-incrimination.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Let's talk about the sentencing process.
23 If I accept your plea of guilty, you'll meet with the probation
24 department and they will prepare a presentence or probation
25 report. That report will have information about you and the

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1 crime that you're alleged to have committed. That report will
2 also have the probation department sentencing guideline
3 calculation.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you and your attorney discussed the
7 sentencing guidelines and how they might apply to your case?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Sentencing guidelines are advisory. What
10 that means is although, I am required to determine the
11 guideline range that applies to your case, once I make that
12 determination I am not required to sentence you within that
13 range.

14 Do you understand?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I will determine the guideline range that
17 applies to your case and I will determine the sentence which
18 may be inside or outside of the guideline range. So as you sit
19 here today there is no promise as to what your guideline range
20 will be, nor is there a promise as to what your sentence will
21 be.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. Let's talk about your
25 agreement with the government. The Court Exhibit One which I

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1 believe you have in front of you, did you sign the last page of
2 that document?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And before signing it, did you read it?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And did you discuss it with your attorney?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that agreement?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Does that agreement constitute the
11 entirety of your agreement with the government?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Counsel for the government and the
14 defense, is that correct?

15 MR. ABRAMOWICZ: Yes, your Honor.

16 MS. METZ-DWORKIN: Yes, your Honor.

17 THE COURT: OK. Let's talk about the statutory
18 penalties that apply. Then we'll go over some portions of the
19 agreement. I'm not going to be over the entire agreement.
20 First let's talk about the statutory penalties.

21 Count One has a maximum term of imprisonment of 20
22 years.

23 Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: There is maximum term of supervised

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1 release of three years.

2 Do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Supervised release is like a term of
5 probation you serve after a term of custody. You'd be subject
6 to drug testing, visits to a probation office and other
7 limitations on your freedom.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If you were to violate a condition of
11 supervised release you could be sentenced to an additional term
12 of custody and an additional term of supervised release without
13 credit for time previously served in custody or on supervised
14 release.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You'd be subject to the possibility of a
18 fine which is based on your ability to pay it. The maximum
19 fine is the greatest of \$250,000, twice the gross pecuniary
20 gain derived from the offense and twice the gross pecuniary
21 loss to persons other than you resulting from the offense.

22 Do you understand?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Is also a \$100 special assessment wits
25 which is like a fine except it is mandatory. I must impose it

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1 regardless of your ability to pay it.

2 Do you understand?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Under your agreement you'd be admitting
5 the forfeiture allegation with respect to Count One of the
6 information.

7 Do you understand?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Under your agreement you are agreeing to
10 make restitution in an amount to be determined at sentencing
11 but at no case less than \$5,900,000.

12 Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: There is a guideline estimate in your
15 agreement with the government. Have you seen that estimate and
16 discussed it with your attorney?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right. That is simply an estimate.
19 It is not binding on the probation department. It is not
20 binding on me. There is no promise as to what your guideline
21 range will be, nor is there a promise as to what your sentence
22 will be.

23 Do you understand

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: I want to make sure that I understand if

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1 you are not a citizen of the United States your guilty plea and
2 conviction make it very likely that you would be removed or
3 deported from the United States.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you discussed that with your
7 attorney?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Defense counsel, have you in fact
10 discussed that with your client?

11 MS. METZ-DWORKIN: Yes, your Honor.

12 THE COURT: You have a statutory right to appeal.

13 Do you understand?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Although have you a statutory right to
16 appeal under your agreement with the government, you have
17 agreed not to file a direct appeal, nor bring a collateral
18 challenge of any sentence within or below the range of 41 to 51
19 months imprisonment.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you have any questions for me before we
23 continue?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Do you have any questions you'd like to

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1 ask your attorney in private before we continue?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Defense counsel, are you aware of any
4 legal defense to the charge or any other legal reason your
5 client should not plead guilty?

6 MS. METZ-DWORKIN: No, your Honor.

7 THE COURT: Mr. Perlman, are you satisfied with your
8 legal representation of to this point?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Mr. Perlman, are you willing to give up
11 your rights to trial and all the other rights we've discussed?

12 THE DEFENDANT: Yes.

13 THE COURT: Other than what's contained in your
14 agreement with the government, has anyone made any promises to
15 induce you to give up those rights?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Has anyone threatened you or attempted to
18 force you to give up those rights?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: How do you plead to Count One of the
21 information; guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: What is it you did that makes you guilty
24 of the crime charged in Count One of the information?

25 THE DEFENDANT: Your Honor, between October of 2018

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1 and April of 2019 --

2 THE COURT: Just a minute now.

3 Mr. Perlman, I see you standing to show respect to the
4 Court and while I appreciate it the, acoustics aren't great.
5 Why don't you have a seat and speak directly into the
6 microphone and I can hear everything you have to say.

7 THE DEFENDANT: So between October of 2018 and April
8 of 2019, I agreed with others to participate in a scheme in
9 which we falsely represented to businesses including through
10 e-mail communications with individuals in other states that we
11 could help them obtain standby letters of credit in exchange
12 for fees that they were required to pay upfront.

13 Instead of obtaining standby letters of credit for
14 these businesses, we took the advance fees for ourselves. I
15 knew that this scheme involved the interstate wire transfer of
16 funds and certain documents. I knew that my conduct and my
17 participation in this scheme was wrong. I'm embarrassed by my
18 actions and I deeply regret them, and I apologize to the
19 victims and the Court.

20 THE COURT: And the scheme that you participated in,
21 did you participate in the scheme voluntarily and
22 intentionally?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And when you participated in this scheme,
25 did you participate with the intent to defraud?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And was it done for the purpose of
3 defrauding others out of money?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And at the time that this participation in
6 this scheme took place, did you understand that it was likely
7 that wire communications would be used?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And were e-mails also used as part of this
10 scheme?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And you participated in this scheme
13 pursuant to an agreement that you had with others; is that
14 correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And at the time that you entered into that
17 agreement, did you understand the purpose of this scheme?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And did you entered into that agreement
20 knowingly, intentionally and willfully?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Any further allocution requested by the
23 government?

24 MR. ABRAMOWICZ: No, your Honor. But as a proffer to
25 the Court on behalf of the government at the potential trial

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1 the government would produce evidence showing the defendant
2 spoke by phone about the scheme and in furtherance of the
3 scheme with an individual who was located in New York, New
4 York.

5 THE COURT: OK. And at the time based on what you
6 indicated, the defendant spoke to an individual who was located
7 in New York.

8 Where was the defendant located?

9 MR. ABRAMOWICZ: And the defendant was out of state.
10 I believe he was in Georgia where he resided.

11 THE COURT: Any further allocution?

12 Did you hear that, Mr. Perlman.

13 THE DEFENDANT: I did, your Honor.

14 THE COURT: Do you agree with what counsel for the
15 government said?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: Any further allocution requested by the
18 government?

19 MR. ABRAMOWICZ: No, your Honor.

20 THE COURT: Any further allocution requested by the
21 defense?

22 MS. METZ-DWORKIN: No, your Honor.

23 THE COURT: OK. I find that Mr. Perlman understands
24 the rights that he is waiving by pleading guilty. I further
25 find that there is a factual basis for the plea and I will

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1 accept his plea of guilty. We will schedule sentencing for
2 Friday, December 6, 2019 at 3:30 p.m.

3 I will ask counsel for the government to provide an
4 offense statement to probation within three weeks and for
5 defense counsel to schedule the presentence report interview
6 within three weeks.

7 Anything else from the government?

8 MR. ABRAMOWICZ: No, your Honor.

9 THE COURT: Anything from the defense?

10 MS. METZ-DWORKIN: No, your Honor.

11 THE COURT: OK. We're adjourned.

12 Thank you.

13 (Adjourned)